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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FREDDY M. MOROCHO, WALTER TACURE on behalf of themselves and others similarly situated,	07 Civ. 2979 (CLB) (MDF)
Plaintiffs,	ELECTRONICALLY FILED
-against-	**DECLARATION OF GEORGE C. KELLY**
GEORGE C. KELLY and NYACK COLONIAL CAR WASH, INC.,	
Defendants.	

GEORGE C. KELLY hereby declares as follows:

1.   I am a Defendant in the above-referenced action. I am also the manager of the car

wash owned and operated by Nyack Colonial Car Wash, Inc. ("Nyack Colonial"). I do not own

any portion of Nyack Colonial and the car wash located in Nyack, New York, is the only car

wash (or any other business) owned or operated by Nyack Colonial. I am fully familiar with the

pleadings and proceedings in this matter and I have personal knowledge of the facts set forth

herein, except where otherwise indicated. I submit this Declaration in support of the Defendants'

motion to dismiss or, in the alternative, for summary judgment.

2.   Although I do not specifically remember anyone named "Walter Tacure" working

at the car wash since I arrived in 1999, and there are no records of anyone named "Walter

Tacure" working at the car wash, I believe that Walter Tacure may be Plaintiff Freddy

Morocho's ("Morocho") uncle, who I knew as "Angel," and who had been working at the car

wash when I first arrived there, as manager, in 1999.

3.   At that time, I asked the employees at the car wash for verification of their

employment eligibility, but "Angel" was unable to provide such verification and stopped

working at the car wash. Shortly thereafter, Morocho asked me to allow his uncle, "Angel," to

resume working at the car wash. I consented, provided that "Angel" provide proof his

employment eligibility as required by law. "Angel" resumed working at the car wash, but again

was unable to provide his employment eligibility verification and stopped working at the car

wash at that time. "Angel" has not worked for Nyack Colonial since that time.

4.   Shortly after I arrived at the car wash, I offered to make Morocho the Operations

Manager of the car wash, such that Morocho would undertake many of the responsibilities for

which I had been responsible. At that time, I reviewed a job description for the position with

Morocho, which provided, among other things, that he would be responsible for training new

employees, directing the employees' work, ensuring that employees arrived to work on time and

performed their jobs satisfactorily, and scheduling employees' hours. (A copy of the job

description is attached hereto as Exhibit A.) The job description also provided that Morocho had

the authority to terminate employees for attendance or other performance problems.

5.   Morocho accepted the position of Operations Manager at that time. At all times

thereafter through the date of the termination of his employment, Morocho was the car wash's

Operations Manager and performed the duties and had the responsibilities and authority

described in his job description.

6.   While he was the Operations Manager, Morocho was paid a weekly salary that

was at all times more than $455, and which was not subject to reduction based on the hours he

worked or any other factor. His primary duty was the management of the car wash – in fact, he was responsible for managing the car wash even when not physically at the car wash and was required to have a mobile phone (which Nyack Colonial paid for) in order to regularly check in with the employees when not at the car wash. He also had the discretion to adjust his own work schedule according to the needs of the car wash.

7.   Morocho's employment as Operations Manager was terminated in or around February 2007, for performance issues. At no time during his employment did Morocho ever make any complaint or raise any issue with regard to overtime, tips or anything else concerning allegedly unpaid compensation.

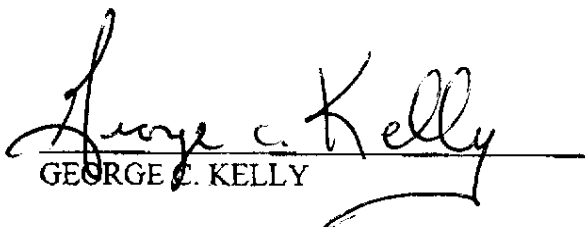I declare under penalty of perjury that the foregoing is true and correct. Executed on June 14, 2007.

GEORGE C. KELLY

EXHIBIT A

NYACK SOFT CLOTH CAR WASH

George Kelly• Mananger

Duties and responabiltys of operation Manager

1) Be present and ready for work at 6:00 -6:15 no later.

2) Making sure all other employees are present for work on time,have a neat apperance and uniform. In a.m. the workers should be in before 6:45 If a employee has aproblem being late or any other reason fire that person.

3) Making sure the car wash is ready to be opened, checking all fluids and chem. Checking equiment for leaks broken parts.

4) Checking equiment for leaks or broken parts.

5) checking the close from the night before , any promblem fix it or clean it
6) P lacement of the employees for the day, collector,srayer,dryer

7) New employee have to be trained and answer any question.

8) Keeping stock of all parts used by us or other car washes ,

                    ex: vending,lightbulbs,paperproducts,chem, motor,ect
9) Making sure that all employee are kind and helpfull to customers.

10) On a slow day cutting back on employees send extra home, keeping the others busy checking the lot cleaning ect.
11) Calling in more people when needed .

12) Wearing a beeper during operation of car wash,if you are not present

13) Being present when it is busy adjusting your work time to busy times.

14) Checking the guys on shifts that your not here . Call ask is evey thing allright

15) Let me know when we need something at the car wash.shovel,rake,gas cont. ect.

16) Let me know if a employee has a working or personal promblem.

17) Time off let me know in advance if you need time off , IF you have something like for example , next wednesday let me know I can switch your day off ,or give you as many as you need.

18) At the end of your shift and Iam not at the wash call and tell me that you are leaving that there is enough guys its slow and that everything is locked and working .

The above may seem like alot, it is not . The above is really my job , I just need help doing it.

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